UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

RICHARD KATZMAN,) No.: 13-CV-00438 LHK
Plaintiff, v.) TENTATIVE ORDER REGARDING) PLAINTIFF'S MOTION FOR) SANCTIONS AND MOTION TO
LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY, a special district,) STRIKE))
Defendant.)))

The Court has reviewed Plaintiff's Motion for Sanctions and Motion to Strike Testimony and Evidence Based on Discovery Violations, ECF No. 123; Declaration of Calvin House in Response to Orders of January 8, 2015, ECF No. 131; and the transcript of Janice Olsen's trial testimony, ECF No. 130. The Court ordered Plaintiff to file a supplement to his motion identifying the pages and lines of testimony Plaintiff seeks to strike and any prejudice resulting from such testimony by 6 p.m. on January 8, 2015, but Plaintiff has not done so. As a result, Defendant could not meet his deadline of 7 p.m. on January 8, 2015 to file a response to Plaintiff's supplement. In the interest of moving things along because our jurors arrive at 9 a.m. tomorrow for the resumption of trial, the Court issues the following tentative order:

(1) The Court will strike Janice Olsen's trial testimony from page 201, line 25 through page 202, line 8 and lines 13-25 on page 219. The Court does not recommend re-reading this testimony

to the jury then telling the jury that such testimony is stricken and must be disregarded because	
such re-reading would only highlight the testimony. However, the Court wishes to hear from the	
parties as to how the Court should inform the jury about the stricken testimony. Perhaps the parties	
can agree to a stipulation that all testimony of Janice Olsen regarding the existence of any written	
audit procedures is stricken and must be disregarded. The parties shall advise the Court as to	
whether a reason should be provided and what exact language should be read to the jury in a joint	
filing to be filed by 9:30 p.m. on January 8, 2015.	

- (2) The Court will give a jury instruction that Defendant does not have any written audit procedures. The parties shall meet and confer and file a joint statement proposing a joint or two competing instructions with explanations as to why each instruction is superior by 9:30 p.m. on January 8, 2015.
- (3) The parties shall appear in Court at 8:30 a.m. for a hearing on this matter. If the parties stipulate to a complete resolution of this matter by 9:30 p.m. on January 8, 2015, then the Court will vacate this hearing, and the parties need not appear in Court until 9 a.m. on January 9, 2015 for the resumption of trial.

IT IS SO ORDERED.

Dated: January 8, 2015

LUCY HOOH
United States District Judge